



# Federal Trade Commission

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Remarks of

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before the

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The views expressed are those of the commissioner and do not necessarily reflect those of the Federal Trade Commission or any other commissioners.

Thank you. I am pleased to be a part of this "National Consumers Week" conference on minority issues, and I want to thank Bonnie Guiton, President Bush's Special Adviser for Consumer Affairs, for inviting me to join you today.

This year marks the 100th anniversary of the Sherman Act, the first federal antitrust statute. The antitrust laws are intended to prevent business practices that restrain competition and harm consumers, so the work the Federal Trade Commission does in this area challenging anticompetitive mergers, price-fixing and other antitrust violations could be characterized as consumer protection work. But I will limit my remarks today to the other areas that the Commission has responsibility for, activities that are more commonly thought of as consumer protection activities -- deceptive advertising, fraudulent sales practices, and so on.

Some of the Commission's consumer protection activities have particular relevance for minority consumers. For example, the Commission's Used Car Rule, which requires used car dealers to put window stickers with warranty and other information on all their used cars, provides that dealers who conduct sales in Spanish must put Spanish-language stickers on their cars. And several years ago, the Commission ordered Norelco to stop making false and unsubstantiated claims that the Norelco "Black Pro" electric shaver would prevent or cure the skin problem known as "razor bumps," which many black men suffer as a result of

shaving. But many of the FTC activities I will discuss today are of importance not only to minority consumers, but also to consumers generally.

Before I go any further, I should tell you that the views I express today are my own, and not necessarily those of the Commission or any other commissioner. Unlike some of the government agencies represented here today, the Federal Trade Commission is a collegial body. The five Commissioners usually agree on the proper course of action, but disagreements are not unheard of.

### **Deceptive Advertising**

Truthful advertising about the price, quality and other attributes of the goods and services that we buy is a vital source of information to consumers. Deceptive advertising, on the other hand, distorts consumer decisionmaking, harming not only consumers but also honest businesses. The Commission devotes considerable time and effort to national advertising, and eliminating false or misleading ads will continue to be one of our highest priorities.

Advertising responds to consumer concerns, and so does our national advertising program. For example, when the price of gasoline, electricity and other forms of energy shot up in the 1970's, many advertising campaigns stressed the energy-efficiency of the advertised products. Unfortunately, a number of those

energy-savings claims were false or unsubstantiated. Not surprisingly, the Commission brought more cases challenging energy-savings claims in those years than it is bringing today.

Today, environmental claims are increasingly common because consumers are increasingly concerned about the effects of certain products on the environment. Many companies are promoting their products as "biodegradable," "recyclable," or "not harmful to the ozone." If true, such claims not only provide environmentally conscious consumers with information that is important to them, but also places significant competitive pressure on rival firms to make their products environmentally "friendly."

Unfortunately, not all environmental claims are true, and I think you can anticipate hearing more about the Commission's efforts to stem false or unsubstantiated environmental claims in the future.

Another area that is receiving increasing scrutiny from the Commission is health claims by food producers. The Food and Drug Administration has jurisdiction over health claims on food labels, but the Commission has primary responsibility for health claims in food advertising. As scientists have uncovered evidence linking specific diseases to diet, health claims in food advertising have proliferated. As a recent FTC Bureau of Economics staff study of the high-fiber cereal market pointed out,<sup>1</sup> advertising is an effective means of communicating information about diet and health, especially to less-educated

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<sup>1</sup> P. Ippolito & A. Mathios, *Health Claims in Advertising and Labeling: A Study of the Cereal Market* (1989) (FTC Bureau of Economics staff report).

and less-affluent consumers. But the great value of truthful information about diet and health underscores the importance of vigorous law enforcement against false or unsubstantiated health claims.

As an example of the Commission's activity in the health claims area, let me briefly describe the complaint we issued in January 1989 against the Campbell Soup Company.<sup>2</sup> That complaint alleged that Campbell had claimed that its soups could help reduce the risk of some forms of heart disease because they were low in fat and cholesterol. According to the complaint, that was deceptive because Campbell failed to disclose that its soups are also high in sodium, which may increase the risk of heart disease.

No discussion of the FTC's work in the area of advertising and health would be complete without a mention of alcohol and tobacco advertising. FTC Chairman Janet Steiger has told the Commission's staff to scrutinize the advertising and promotion of alcohol and tobacco carefully, giving particular attention to ads or promotional activities that are aimed at younger consumers. The FTC's jurisdiction over alcohol and tobacco advertising is limited, but the Commission will bring law enforcement actions against advertisers who do violate the FTC Act or the other statutes enforced by the Commission. We look forward to continuing to work with the Department of Health and Human

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<sup>2</sup> Campbell Soup Co., Docket No. 9223 (complaint issued January 25, 1989).

Services and other federal agencies to address the public's concerns about alcohol and tobacco.

## Credit

The Commission attacks unfair or deceptive acts or practices by creditors by bringing actions under Section 5 of the FTC Act. In addition, the Commission enforces a number of special federal consumer credit statutes, including:

- The Equal Credit Opportunity Act, which prohibits the denial of credit on the basis of race, sex, marital status, religion, age, or receipt of public assistance;

- The Truth In Lending Act, which requires creditors to disclose the annual percentage rate and other credit terms to consumers;

- The Fair Credit Reporting Act governs credit reporting agencies, which are companies that sell creditors reports that contain the credit histories of those applying for loans or credit cards; and

- The Fair Debt Collection Practices Act, which prohibits unfair or abusive practices by bill collectors.

The Commission also enforces its own consumer credit regulations. The Credit Practices Rule<sup>3</sup> prohibits certain provisions in consumer credit contracts. For example, the Credit Practices Rule prohibits the use of "confession of judgment"

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<sup>3</sup> 16 U.S.C. Part 444.

provisions, which require debtors to waive their right to defend themselves or even to be notified when creditors file collection suits. That rule also requires creditors to disclose to cosigners that they must pay the loans for which they cosign if for any reason the debtor does not pay. The Holder-In-Due-Course Rule<sup>4</sup> gives consumers certain protections when goods they buy on credit are not satisfactory. According to that rule, if a creditor sells a consumer's loan or note to a third party, the consumer can still assert all the legal defenses that he or she could have asserted against the original creditor.

Let me now turn to some examples of recent Commission actions in the credit area. Over the years, the Commission has brought a number of credit discrimination cases under the Equal Credit Opportunity Act, or "ECOA." In the last year, the Commission has accepted consent decrees requiring several so-called "small loan" finance companies to pay civil penalties for alleged violations of the ECOA.<sup>5</sup>

Small-loan finance companies specialize in very small consumer loans -- usually \$50 to \$300 or so. Most of the people who borrow money from such companies are low-income, high-risk borrowers who find it difficult or impossible to qualify for a loan from a bank or other conventional lender. Not surprisingly,

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<sup>4</sup> 16 U.S.C. Part 433.

<sup>5</sup> E.g., U.S. v. City Finance Corp., No. 1:90-cv-246-MHS (N.D. Ga. Feb. 1, 1990) (consent decree); U.S. v. W. Lee Moore, III, d/b/a Signature Loan Co., No. 3-89-2531-F (N.D. Tx. Oct. 20, 1989) (consent decree).

the interest rates charged by small-loan companies are quite high. Most of these companies are relatively small in size, and they operate in a rather informal manner.

The small-loan companies that the Commission investigated had one other thing in common: a firm "no job, no loan" policy. By requiring that loan applicants have full-time jobs and by refusing to consider income from other sources, such as retirement benefits and alimony, these firms allegedly violated the ECOA and Federal Reserve Board Regulation B by discriminating on the basis of age, sex, marital status, and receipt of public assistance. Refusing to consider income from pensions or Social Security retirement benefits discriminated against the elderly. And refusing to consider income from alimony and child support payments discriminated against divorced women. In short, it appeared that the loan companies were discriminating against a highly vulnerable segment of the population.

The Commission also has brought a number of enforcement actions against so-called "credit repair" firms.<sup>6</sup> Credit repair firms advertise their services to consumers who cannot get credit because their credit bureau reports, which describe their credit history, contain negative information -- for example, information indicating that the consumer has failed to make loan payments on time.

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<sup>6</sup> E.g., U.S. v. Credit Repair, Inc., No. 89-C-80344 (N.D. Ill. Mar. 7, 1990) (consent decree); U.S. v. Nationwide Credit Services, Inc., No. 88-4071-SM (E.D. La. Oct. 18, 1989) (consent decree).



Section 611 of the Fair Credit Reporting Act, or "FCRA," allows consumers to dispute inaccurate or incomplete information in credit reports. But many of those who turn to credit repair firms are not the victims of inaccurate credit reports. The negative information in most credit reports -- late payments, bankruptcies, and the like -- is accurate, so the Section 611 dispute procedures, which are intended to correct inaccurate information, are unlikely to help in most instances.

Nevertheless, credit repair companies claim that they can improve credit reports even if the negative information in those reports is accurate. These companies, which typically charge a fee of \$400 to \$500, often dispute all of the information on their customers' credit reports, hoping to overwhelm credit reporting bureaus with so many disputes that it is difficult or impossible for them to verify the accuracy of negative information within a reasonable amount of time. This technique rarely works; most credit reporting bureaus are able to reverify the disputed information, and the negative information remains in the credit report. Credit repair firms often sell their services with a money-back guarantee, but many of the consumers who have attempted to get a refund have not succeeded. Some firms quickly go out of business; others simply refuse to honor their so-called money-back guarantees.

Bills to regulate credit repair firms have been introduced in Congress and several state legislatures. The Commission has supported legislation requiring credit repair firms to make

certain disclosures to consumers. For example, we supported a requirement that credit repair companies explain to consumers that the law does not require credit reporting bureaus to remove negative items from credit reports if those items are correct. One possible disclosure would read as follows:

You have no legal right to have accurate information removed from your credit bureau report. Under the Fair Credit Reporting Act, the credit bureau must remove accurate information from your report only if it is over seven years old. Bankruptcy can be reported for ten years. Even when a debt has been completely repaid, your report can show that it was paid late if that is accurate.

If consumers had that disclosure in front of them, they would be less likely to believe the deceptive claims of credit repair firms -- and less likely to pay sizeable sums of money to someone who will be unable to help them get credit.

### Telemarketing Fraud

Americans lose an estimated one billion dollars yearly to fraudulent telemarketers. Anyone with a telephone is fair game for these fly-by-night con men, who sell everything from too-good-to-be-true bargain vacation packages to shares in worthless gold mines to overpriced home water purifiers.

The FTC has an impressive record in the war against telemarketing fraud. So far, we have brought about 50 cases and

won \$100 million in judgments. Consumers have already received \$6.5 million in redress as a result of these actions, and another \$20 million in redress is on the way. But telemarketing remains a widespread problem. All too often, these scam artists close up and leave town with their victims' money before we or other law enforcement agencies can catch them. Even when we do catch them, they may have already hidden or spent most of their ill-gotten gains.

One way we hope to improve the effectiveness of our anti-fraud efforts is to share information and coordinate our activities with other federal, state, and local government agencies and with consumer and business groups. The state attorneys general and the Commission routinely share information, refer cases to one another, and divide law enforcement responsibility in cases where state and federal jurisdiction is overlapping in order to minimize unnecessary duplication of effort. Where the fraud involves health and cosmetic claims -- for example, AIDS remedies or weight-loss products -- the Commission works closely with the FDA. The Commission is also a member of the Alliance Against Fraud in Telemarketing, a coalition of some 60 organizations headed by the National Consumer League.

The Commission has also supported federal legislation that would remove some of the legal obstacles to our anti-fraud efforts. For example, the Right to Financial Privacy Act requires that customers of banks and other financial institutions

be notified when federal agencies inquire about their accounts. To be effective, we must build a case and ascertain the whereabouts of the defendant's assets without alerting him or her to the existence of our investigation. We have supported a bill that would exempt us from the notice requirement of the Right to Financial Privacy Act when there is reason to believe that giving notice would result in the dissipation or removal of assets that were obtained through fraudulent means.

It would be naive to think that new legislation or increased federal-state cooperation will eliminate telemarketing fraud altogether. Fraud continues to present enormous difficulties for law enforcers. But we are seeing improvement in both the quality and the quantity of our telemarketing fraud cases. We have put a stop to some of the most egregious scams, and our efforts to track down and return to consumers the money that was taken from them have been increasingly successful.

### **Consumer Education**

While the FTC is primarily a consumer protection agency, it is also a consumer education agency. When it comes to consumer protection, an ounce of education is often worth a pound of law enforcement. Try as we might, we rarely are able to obtain sufficient consumer redress from fraudulent and dishonest businessmen to compensate all their victims fully. Well-informed consumers -- consumers who know when to say "no" to an offer that

sounds too good to be true -- can do more to prevent fraud and deception than all the government law enforcement agencies together.

Our Office of Consumer and Business Education develops, produces and distributes print and broadcast materials that publicize major marketplace frauds and other problems and that explain the statutes and regulations that the Commission enforces. That Office currently offers about 100 different consumer and business publications, which are listed in the *Best Sellers for Consumers* and *Best Sellers for Business* brochure that can be found in your conference packets. You can get an idea of what our printed materials look like by examining three FTC consumer education publications that also are included in those packets. The first one, which is called *Smart Buying*, is a brand-new brochure that covers a number of topics --including telephone and mail fraud, the Used Car Rule, and deceptive health and beauty claims. The second one, *Using Plastic*, is subtitled *A Young Adult's Guide to Credit Cards*, but it also would be useful for many not-so-young adults who have questions about how to compare the cost of different credit cards, how to get billing errors corrected, and what to do if you're having trouble paying off your credit-card balance. I also brought along the Spanish-language version of our consumer brochure on warranties, which is only one of a number of our publications that is available in both English and Spanish.

All of the publications listed in the *Best Sellers* pamphlet -- which cover everything from home mortgages to credit problems to fraudulent telemarketing scams -- are available free from the FTC or for a nominal charge from the Consumer Information Center in Pueblo, Colorado. Over two million of these brochures were distributed last year. Everyone on the Office of Consumer and Business Education's mailing list of 10,000 institutions and individuals -- including federal, state and local government offices, consumer and business organizations, libraries, and the news media -- receives copies of our publications. If any of you here today has suggestions for additional consumer education projects, I urge you to tell me or contact Ms. Irene Vawter, who heads our Consumer and Business Education Office. We are always on the lookout for good consumer education ideas.

I should acknowledge the efforts of the many government agencies, consumer groups, and corporations who have helped the Commission develop, produce and distribute consumer education materials. In the last five years, our Office of Consumer and Business Education has participated in joint educational efforts with the Alliance Against Fraud in Telemarketing, the American Bar Association, the American Association of Retired Persons, the American Express Company, the American Newspaper Publishers Association, the American Numismatic Association (rare coin dealers), the American Society of Travel Agents, Associated Credit Bureaus, Inc., and the Automatic Transmission Rebuilders Association -- and that's just the "A's." I understand that

Stephen Brobeck of the Consumer Federation of America plans to discuss the "National Consumer Competency Test," which has been a joint effort led by the CFA, to which the Educational Testing Service, TRW, the Commission's Office of Consumer and Business Education and others also contributed.

A few months ago, the Federal Trade Commission celebrated its 75th birthday. Such occasions always inspire not only reflections on the past, but also speculation about what the future will bring. I am confident that the topics I have discussed today -- national advertising, credit, telemarketing fraud, and consumer education -- will continue to be important concerns for the foreseeable future, but I am equally confident that many unforeseen challenges will face us in the next decade. Everything from advances in technology to the always-remarkable creativity of those who are willing to bend or break the rules in order to separate consumers from their hard-earned money will make our job -- and the consumer's life -- more difficult. With hard work and the help of those of you here today and others like you, I hope that we will continue to make progress in our efforts to protect consumers and to help consumers learn to protect themselves.

Thank you.